IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

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Criminal Revision No. 1899 of 2004.
Date of Decision: September 07, 2006.

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Vijay Kumar and others vs. Parmod Kumar and others.

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Before: Hon'ble Mr.Justice R.S.Madan.

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Present: Shri Sandeep Kotla, Advocate, for the petitioners.

Shri S.S.Goripuria, Deputy Advocate General, Haryana.

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R.S.Madan, J

This revision petition is directed against the order dated 1.04.2004 passed by the learned Additional Sessions Judge, Karnal, whereby he granted the benefit of probation to the accused in a case under Sections 323, 324, 148, 149, 506 of the Indian Penal Code.

2. Briefly stated the facts of the case are that on 6.11.1996 at about 3.30 PM members of Bajrang Dal had organized a protest march to the house of Deputy Commissioner, Panipat. Complainant Vijay Kumar and Surinder Kumar and Sanjay Kumar were also members of the said Dal. Sanjay did not participate in the protest whereas complainant Vijay Kumar and injured Surinder Kumar went to the factory of Sanjay Kumar, to meet him at about 4 P.M. in order to inquire as to why he had not joined the protest mark. In the meanwhile, when they were talking with Sanjay Kumar inside the factory premises, accused Mahinder Kumar armed with a gandasi, Parmod armed with a gandasi, Sushil Kumar and Anil Kumar sons of Shri Mahinder armed with lathis and Sandeep Kumar empty handed entered into the factory and exhorted to teach them (Vijay Kumar and Surinder Kumar) a lesson for breaking their shop. Whereupon accused Mahinder Kumar gave a gandasi blow on the head of the complainant, Parmod Kumar gave a gandasi blow on the small fingers of his left hand, Sushil Kumar gave a lathi blow and inflicted injuries on the ring finger of his right hand, Anil Kumar gave a lathi blow on the right side of his waist and Sandeep gave a

fist blow on his left shoulder. Sushil Kumar also gave a lathi blow on the head of Surinder. Similarly, Sandeep gave a fist blow on the right ear of Surinder. But PW Sanjay remained stood apart from them out of fear. Both the injured raised alarm and to which Rajinder son of Om Parkash and Sanjay, who was already present there, came to their rescue. However, accused while leaving the place of occurrence also threatened them to death. Both the injured were hospitalized by Rajinder and Sanjay from where on receipt of V.T.Message HC Hukam Chand and constable Satish Kumar came to the Hospital. After obtaining the opinion of the doctor, attending on the injured, recorded the statement of the injured/complainant Vijay Kumar and on the basis of which, this case was registered and investigated. After the completion of investigation, challan for the trial of the accused was presented in the court of learned Illaqa Magistrate, Panipat from where this case was transferred to the court of learned Chief Judicial Magistrate, Karnal, for trial of the accused, as per order dated 12.02.2001 passed in Criminal Misc. No. 36581-M of 1999.

3. On appearance of the accused before the Court, they were charged under Sections 148, 452/149, 323/149, 324/149 and 506/149 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case against the accused, examined seven witnesses. After the case of the prosecution was closed, the accused were examined under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence appearing against the accused was put to them, to which they pleaded innocence and false implication.

5. The accused proffered defence and examined six witnesses.

6. After hearing the learned counsel for the parties and taking into consideration the evidence brought on the record, the learned trial court convicted the accused for the commission of offence punishable under Sections 148/149/452/323/324/506 of the Indian Penal Code and sentenced each of them to undergo simple imprisonment for a period of six months under Section 148 IPC. They were also sentenced to undergo simple imprisonment for a period of three months under Section 323 IPC; under Section 324 IPC they were

sentenced to undergo simple imprisonment for one year; under Section 452 IPC they were sentenced to undergo simple imprisonment for a period of one year and fine of Rs.200/-. In default of payment of fine, each of the convict was to undergo simple imprisonment for a period of one month. They were further sentenced to undergo simple imprisonment for a period of three months under Section 506 of the Indian Penal Code. All the substantive sentences were ordered to run concurrently.

7. Aggrieved by the impugned order of sentence, appeal was filed before the Court of Additional Sessions Judge, Karnal, who vide order dated 1.4.2004 maintained the order of conviction but modified the order of sentence and instead of imprisonment released the accused on probation on their furnishing personal bonds in the sum of Rs. 15,000/- with one surety in the like amount, each, for a period of one year for keeping peace and to be of good behaviour during this period and to come and undergo sentence as and when called by the trial court. The amount of fine realized from the accused was converted into costs of proceedings. Each of the accused was directed to contribute a sum of Rs.3000/- towards the amount of compensation to be paid to the injured. Out of the total amount of compensation, a sum of Rs.9,000/- was ordered to be paid to Surinder Kumar injured and a sum of Rs.6,000/- was ordered to be paid to Vijay Kumar injured. This order of the learned Additional Sessions Judge dated 1.04.2004 has been challenged by the complainant in this revision petition and has prayed for maintaining the order of sentence of imprisonment awarded by the learned Judicial Magistrate, Karnal.

8. I have heard the learned counsel for the parties and have perused the record.

9. The learned counsel for the petitioner contended that the occurrence in the instant case took place on 6.11.1996 and the learned Chief Judicial Magistrate, Karnal after taking into consideration the injuries suffered by the complainant-injured, convicted and sentenced the accused as mentioned in the judgment dated 15.1.2000 passed by the learned C.J.M.Karnal.

10. Learned counsel for the petitioner contended that there was no

occasion for the learned Additional Sessions Judge, Karnal to have modified the order of substantive sentence of imprisonment to probation. Thus, the learned counsel contended that the order passed by the learned C.J.M.Karnal convicting and sentencing the accused, be restored.

11. I have given my thoughtful consideration to the submissions of the learned counsel for the petitioner. It is not disputed that in the instant case the accused have committed the offence punishable under Sections 323/324/148/149/506 of the Indian Penal Code. And the occurrence took place on 6.11.1996. More than 10 years have elapsed. The accused have faced the agony of protracted trial for a period of 8 years in the trial court and two years before this Court, during the pendency of this revision petition. In such a situation they were entitled to the benefit of protracted trial. Moreover the period of probation of one year as ordered by the learned Additional Sessions Judge, Karnal vide order dated 1.04.2004 has already lapsed and the accused have not committed any offence during the probation period. They have also deposited the amount of compensation as ordered by the learned Additional Sessions Judge, Karnal. In such a situation, it cannot be said that the learned Additional Sessions Judge has wrongly exercised his discretion while granting the benefit of probation to the accused.

12. As a sequel to my above discussion, no interference in the revision petition is called for.

13. Dismissed.

(R.S.Madan)
Judge

September 07, 2006.
Malik